

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO.1180 OF 2012

BETWEEN:

PUTTARAJA
S/O JAVAREGOWDA @ RAJANNA
AGED ABOUT 31 YEARS,
BANDIHALLI,
SHANTHGRAMA HOBLI
HASSAN TALUK & DISTRICT PIN; 573220

...APPELLANT

(BY SRI. NAGENDRA B., ADVOCATE)

AND:

THE STATE OF KARNATAKA
THROUGH SHANTHIGRAMA POLICE,
HASSAN,
REP BY THE STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDINGS,
BANGALORE-560 001.

...RESPONDENT

(BY SRI. B. LAKSHMAN, HCGP)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CODE OF CRIMINAL PROCEDURE, 1974 AGAINST JUDGMENT AND ORDER OF SENTENCE DATED 17/18-08-2012 PASSED BY THE LEARNED ADDL SESSIONS JUDGE AND FAST TRACK I COURT AT HASSAN IN SC NO.27/2011, THEREBY CONVICTING THE IST APPELLANT FOR THE OFFENCE PUNISHABLE UNDER SECTION 304B OF IPC AND SENTENCING HIM TO UNDERGO IMPRISONMENT FOR 10 YEARS.

THIS CRIMINAL APPEAL HAVING BEEN HEARD AND RESERVED ON 28.01.2026, COMING ON FOR 'PRONOUNCEMENT OF ORDERS' THIS DAY, THE COURT DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

CAV JUDGMENT

1. The appellant has preferred this appeal aggrieved by the judgment and order of sentence dated 17th/18th 08 August, 2012 passed in SC No.27 of 2011 by the learned Additional Sessions Judge and Fast Track I Court at Hassan (for short "the trial Court") convicting the appellant for the offence punishable under Section 304B of Indian Penal Code and sentencing him to undergo imprisonment for 10 years.
2. The parties are referred to as per their ranks before the Trial Court for the sake of convenience.
3. The case of the prosecution, as borne out from the charge-sheet materials, is as follows:H. Bandihalli village is situated within the limits of Shantigramma Police Station. In the month of April 2004, negotiations were held for the marriage of Sharada (since deceased), elder sister of PW1, with the accused Puttaraja. The marriage talks took place in the presence of PW12, and during the said negotiations PW2 paid a sum of ₹51,000/- in cash and 49 grams of gold ornaments to the accused towards dowry. Thereafter, the

marriage between Sharada and the accused was solemnized at Madaba village. After the marriage, Sharada resided with the accused at H. Bandihalli village. For a period of about two years, the accused treated Sharada properly. Thereafter, the accused spent the dowry amount and also sold the gold ornaments belonging to Sharada. Subsequently, the accused began to subject Sharada to physical and mental cruelty, assaulting her and insisting that she bring additional dowry from her parental home. Unable to bear the cruelty and harassment, Sharada left the matrimonial house along with her children and went to her parental home. PWs22 and 23 intervened and conducted a Panchayat, wherein the accused was advised not to ill-treat Sharada and to lead a cordial marital life. In spite of the same, the accused continued to consume alcohol frequently, return home in an intoxicated condition, and assault and harass Sharada.

4. On 13th June, 2010, in the morning hours, a quarrel took place between Sharada and the accused when Sharada questioned the accused about not bringing household articles. During the said quarrel, the accused assaulted Sharada. On the same day, at about 5.00 p.m., when Sharada was present

in the shed of her house at H. Bandihalli village, the accused came there, abused her in filthy language, assaulted her with his hands, reiterated the demand for dowry, and threatened to kill her. Thereafter, the accused took kerosene oil from the house, poured it on the body of Sharada, and set her on fire. As a result of the said act, Sharada sustained severe burn injuries and was shifted to the Government Hospital, Hassan, for treatment. While undergoing treatment, Sharada succumbed to the burn injuries on 18th June, 2010 at about 7.10 p.m. It is the further case of the prosecution that the accused, by subjecting Sharada to cruelty in connection with dowry demands and by intentionally pouring kerosene and setting her on fire, caused her death. It is also the case of the prosecution that even after the death of the deceased, the accused failed to return the dowry articles to her legal heirs. On completion of investigation, the Investigating Officer laid the charge-sheet against the accused for the offences punishable under Sections 3, 4 and 6 of the Dowry Prohibition Act and Sections 323, 504, 498-A, 304-B and 302 of the Indian Penal Code.

5. The charges framed against the accused were read over and explained to him by the Trial Court on 10th November, 2011. The accused pleaded not guilty and denied all the allegations, thereby casting the burden upon the prosecution to prove the charges beyond reasonable doubt. In order to substantiate its case, the prosecution cited forty-one witnesses, out of whom twenty-nine witnesses were examined. The prosecution also relied upon documentary evidence marked as Exhibits P1 to P45 and material objects marked as MOs1 to 7. After completion of the prosecution evidence, the accused was examined by the Trial Court under Section 313 of the Code of Criminal Procedure on 25th April, 2012, wherein all incriminating circumstances appearing against him were put to him, which he denied. As the accused stated that he had no defence evidence to adduce, the case was posted for final arguments. The Trial Court heard the arguments advanced by Sri Harish Babu, learned counsel for the accused, and the submissions made by the learned Special Public Prosecutor on behalf of the State, and thereafter proceeded to consider the material on record and frame the points for determination. By the impugned

judgment and sentence, the accused /appellant was sentenced to undergo rigorous imprisonment for a period of ten years. Being aggrieved by the impugned judgment of conviction and sentence, the appellant has presented this appeal.

SUBMISSIONS OF LEARNED COUNSEL FOR APPELLANT/ACCUSED:

6. The learned counsel appearing for the accused has advanced his arguments and reiterated the grounds of appeal urged in the memorandum of appeal as follows:

The impugned judgment and order of sentence passed by the Court below is contrary to law, evidence on record and liable to be set aside to meet the ends of justice. The Court below has failed to note that the prosecution has failed to prove the case beyond reasonable doubt by adducing cogent and independent evidence. The learned Judge has committed an error in convicting the appellant solely on the basis of evidence of alleged dying declaration without there being acceptable evidence to prove the guilt even after acquitting other charges.

7. The learned Trial Court has failed to note that the prosecution having failed to examine all the witnesses and having regard to the inconsistency in the evidence and of the prosecution witnesses and alleged dying declaration was recorded without the doctors note to certify fitness to give statement. In the absence of cogent and trustworthy material convicting the appellants on presumption is unsustainable.

8. The learned Sessions Judge has failed to note that all the material witnesses have turned hostile including the parents and brothers of victim. The most significant factor is that the prosecution has not established the ingredients of section 304B of IPC, that soon before her death she was subjected to cruelty by the appellant/husband in connection with the demand for dowry. In the totality of the circumstances convicting the appellant on the basis of surmises and conjectures is unsustainable. Therefore appellant has to be given benefit of doubt.

9. Learned counsel appearing for the appellant further submitted that the conviction recorded by the Trial Court rests solely on the alleged dying declaration marked as Exhibits P35 and P36, while except PW18-Manjegowda PWs1, 3, 4 and 5,

all the material prosecution witnesses have turned hostile , and specifically PW2-Jyothi whose name was mentioned by the deceased victim in the Exhibit P35 has completely turned hostile and have not supported the prosecution case. It was contended that in the absence of any independent corroboration, the Trial Court erred in placing implicit reliance on the dying declarations and in recording a finding of guilt, which does not inspire confidence and is contrary to settled principles governing criminal trials.

10. Learned counsel further submitted that the evidence of PW19-Dr. Krishnamurthy, has fairly admitted that no written certificate was issued certifying the fitness of the deceased to give a statement and that the deceased had sustained 85–90% burn injuries. It was pointed out that the submissions of PW19 further disclose that the deceased was administered painkillers, intravenous fluids, analgesics, sedatives and antibiotics at the relevant time, and that a person with such extensive burn injuries would be suffering from severe pain, thereby affecting her mental alertness and voluntariness while making the statement. It was also submitted that the Investigating Officer-PW25 and Assistant Commissioner-PW26

have failed to follow the procedure laid by the Hon'ble Supreme Court in the case of NARENDAR SINGH. Moreover, PW25 has not produced the hospital case sheet or treatment records to establish the fitness condition of the deceased at the time of recording the dying declaration.

11. Learned counsel further submitted that Exhibit P37, the Accident Register Extract, merely records the history of burn injuries and does not disclose the name of the appellant or attribute any overt act to him. It was argued that the prosecution has failed to establish cruelty or harassment in connection with dowry demand soon before the death, which is an essential ingredient for attracting Section 304-B of the IPC. On these grounds, learned counsel submitted that the judgment of conviction and order of sentence passed by the Trial Court are unsustainable in law and on facts and warrant interference by this Hon'ble Court.

12. The counsel further argued that in paragraph 42 of the impugned judgment records an observation that there were no reasons to disbelieve the contents of Exhibits P35 and P36. It further holds that the alternative version put forth by the accused is that, that the victim caught fire due to the bursting

of a kerosene stove. The Trial Court observed that the fire could not have been caused due to a stove burst and that someone had set the victim on fire. On that premise, the Trial Court concluded that the only inference that could be drawn pointed towards the accused, which is absolutely baseless. It creates reasonable doubt and as such, the appellant is entitled to be acquitted.

13. On all these grounds the appellant counsel urged for the acquittal of the accused from the alleged offence by setting aside the impugned judgment.

SUBMISSIONS ON BEHALF OF STATE

14. Per contra, learned HCGP Sri B. Lakshman, forcefully advanced his arguments that the Trial Court has properly appreciated the evidence on record and passed the impugned judgment. The doctrine of dying declaration is founded on the maxim "**Nemo moriturus praesumitur mentire**"—a man will not meet his Maker with a lie in his mouth. Under Section 32(1) of the Indian Evidence Act, 1872, a statement made by a person as to the cause of his death or the circumstances of the transaction resulting in his death becomes relevant when

the cause of that person's death is in question. The sanctity attached to such declaration rests on the presumption that a person on the verge of death is unlikely to falsely implicate another. It is well settled that a truthful and voluntary dying declaration, recorded while the declarant was in a fit state of mind, can form the sole basis of conviction without corroboration, provided it inspires confidence of the Court. The requirement of medical certification is only a rule of prudence and not an absolute mandate, and the Court must be satisfied that the declaration was free from tutoring, prompting or imagination. Absolutely, there are no material witnesses to interfere with the impugned judgment passed by the Trial Court. Hence, he sought for the dismissal of this appeal.

15. After hearing both parties the arguments, the following points would arise for consideration:

(1) Whether the impugned judgment passed by the Trial Court suffers from any legal infirmities requiring this Court to intercede?

(2) What order?

16. My answers court to the above points are:

Point No. 1 : In the affirmative

Point No. 2 : As per the final order.

REGARDING POINT NO.1:

17. I have carefully re-examined the prosecution evidence, the materials on record, the impugned judgment and the arguments submitted on behalf of both sides. The accused is in judicial custody. Except one witness all the material witnesses have turned hostile, only on the basis of dying declaration, which is marked as Exhibit P35 and 36, the trial court has convicted the accused. The Investigating Officer has not produced the case sheet maintained by the hospital authorities to show the condition of the deceased as on the date of recording dying declaration. PW19-Dr.Krishnamurthy has deposed that Exhibit P35 dying declaration is recorded in his presence and has deposed that she has suffered from 90% burn injuries. During the course of cross-examination of PW19 has clearly admitted that, he has not issued any written certificate so as to condition of the deceased to give statement. Further, he has admitted that at the time of recording statement he has given pain killers, IV fluids,

analgesics, sedatives, antibiotics. Further he has clearly admitted that, 85-90 burnt injured is injured she will suffering from severe pain. Therefore, they have given sedatives injections. Exhibit P37 is the accident Register Extract, the patient admitted to the hospital with history of burn injuries. The name of the accused is not known. the evidence of PW19- Dr.Krishnamurthy, has fairly admitted that no written certificate was issued certifying the fitness of the deceased to give a statement and that the deceased had sustained 85-90% burn injuries. It was pointed out that the submissions of PW19 further disclose that the deceased was administered painkillers, intravenous fluids, analgesics, sedatives and antibiotics at the relevant time, and that a person with such extensive burn injuries would be suffering from severe pain, thereby affecting her mental alertness and voluntariness while making the statement. It was also submitted that the Investigating Officer PW25 and assistant commissioner PW26 have failed to follow the procedure laid by the Hon'ble Supreme Court in the case of NARENDAR SINGH. Moreover PW25 has not produced the hospital case sheet or treatment

records to establish the fitness condition of the deceased at the time of recording the dying declaration.

18. PW20, Dr. Nagaraj, Ex.P.37 who was working in casualty of the Government Hospital, Hassan has stated in his cross-examination that ಗಾಯಗಲಿಂದಾರ ನೂವು ಢುತ್ತು ಶಾಕ್‌ನಿಂದ ಅವಲಿಗೆ

ಪೂರ್ಣ ಪ್ರಜ್ಞೆಯಿರಲಿಲ್ಲ. He further admitted that antiseptic injections

and pain killer was given.

19. Another witness, Mr. Manjegowda (PW18), has deposed that at about 6.00 to 6.15 p.m., he received a phone call from the deceased herself from an unknown mobile number, wherein she informed him that her husband had poured kerosene on her and set her ablaze and sought help to save her. He has further stated that he immediately proceeded towards the place of incident at Bandihalli, and by the time he reached, the ambulance was already present at the spot and had taken her to Hassan Government Hospital for treatment. PW18 has also deposed that he was one among those who had earlier participated in the panchayat convened for reconciliation between the couple. He has denied any ill-will against the accused. On perusal of his evidence dated 23rd

January, 2012, it is elicited that he received the call between 6.00 and 6.15 p.m. from an unknown number and that he took about half an hour by car to travel from Haralahalli to Bandihalli. If the time required for the ambulance to reach the Government Hospital is also taken into consideration, it would require approximately half an hour, having regard to the distance between Bandihalli and Hassan Government Hospital. Still, according to PW-18, when he reached the place of incident, the ambulance was present there, which is evident from his testimony.

20. On perusal of the evidence of PW19-Dr. Krishnamurthy, Assistant Professor, Department of Surgery, he has deposed that on 13th June, 2010 at about 6.00 p.m., the Chief Medical Officer sent the deceased for treatment of burn injuries, and at about 1.30 a.m. on 14th June, 2010, the Assistant Commissioner recorded the dying declaration, marked as Ex.P35, after obtaining his oral opinion regarding the fitness of the deceased to give the statement. The evidence of PW20-Dr. Nagraj, and Exhibit P37 (MLC) disclose the time as 7.45 p.m. On perusal of Ex.P-37, it is noted that the deceased was brought by one Chandru in 108 Ambulance for burn injuries at

7.45 p.m., and she was thereafter referred to the Surgery Department. In the cause for admission and history column, it is mentioned as "suicidal attempt."

21. It can be observed that the entire fact is not put forth by the prosecution beyond reasonable doubt, as it would have been. On perusal of the prosecution papers the time of admission to the hospital is not clear. In Ex p 37 (MLC) it is 7:45 PM and in the evidence of the PW19 it is about 6:00 PM on 13th June, 2010. The prosecution has not collected the material fact that from which number, at about 6.00 to 6.15 pm the deceased herself has made a call to the witness PW18, Manjegowda. I found there are lot of inconsistencies in proving the alleged incident.

22. The criminal jurisprudence believes in best evidence rule, in our adversarial judicial system an accused is considered to be an innocent until proven guilty and the guilt of the accused has to be proved beyond reasonable doubt and not on a mere preponderance of probabilities, thus imposing upon the prosecution the obligation to adduce the best possible evidence to prove the guilt of the accused. The rule has been defined to mean "so long as the higher or superior evidence is

within your possession or may be reached by you, you shall give no inferior proof in relation to it" In the case of MOHANLAL SHAMJI SONI V. UNION OF INDIA AND ANOTHER, it has been held by the Supreme Court that, *"...it is a cardinal rule in the law of evidence that the best available evidence should be brought before the court to prove a fact or the points in issue."*

23. On careful scrutiny of entire evidence placed by the prosecution, prosecution has put forth best evidence so far as possible by placing substantial evidence to prove the guilt of the accused, hence we are of the considered view that the learned Trial Court has not properly appreciated the evidence on record in a proper perspective manner and has grossly erred in convicting the accused for the offence punishable under Section 304B of IPC. On re-evaluation of the material prosecution witnesses, I found it just and necessary to interfere in the impugned judgment.

24. Accordingly, the impugned judgment does call for interference by this Court as the same is suffering from any legal infirmity. Accordingly, I answer Point No.1 in the affirmative.

REGARDING POINT NO.2:

25. In view of the aforesaid reasons and discussions, we proceed to pass the following.

ORDER

- (i) The appeal filed by the accused under Section 374(2) of Cr.P.C is hereby allowed.
- (ii) The judgment of conviction and order of sentence dated 17th August, 2012 passed in SC No.27 of 2011 by the Additional District & Sessions Judge and Fast Track Court-I, Hassan is hereby set aside.
- (iii) Accused is acquitted of the offence punishable under Section 304B of Indian Penal Code;
- (iii) Member Secretary, District Legal Services Authority, Hassan, is directed to award compensation to two minor sons and to take necessary legal steps in accordance with relevant acts and rules, in favour of minor

guardian within 3 months from the date of receipt of certified copy of this judgment.

- (iv) Registry is directed to transmit the trial court records along this judgment to the trial court and to member secretary, District Legal Services Authority, Hassan, to take necessary steps as observed by this court.

**Sd/-
(G BASAVARAJA)
JUDGE**

Inn